

ASSEMBLY BILL

No. 509

Introduced by Assembly Member Blumenfield

February 20, 2013

An act to amend Section 1770 of the Civil Code, relating to consumer affairs.

LEGISLATIVE COUNSEL'S DIGEST

AB 509, as introduced, Blumenfield. Consumer affairs.

Existing law, the Consumers Legal Remedies Act, makes unlawful certain acts identified as unfair methods of competition and unfair or deceptive acts or practices undertaken by any person in a transaction intended to result or which results in the sale or lease of goods to any consumer.

This bill would add to that list of unlawful acts the act of representing a product as designed, made, or both in a specific city or county, by using a specified “made in” label, unless the product complies with specified standards.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 1770 of the Civil Code is amended to
- 2 read:
- 3 1770. (a) The following unfair methods of competition and
- 4 unfair or deceptive acts or practices undertaken by any person in
- 5 a transaction intended to result or which results in the sale or lease
- 6 of goods or services to any consumer are unlawful:

- 1 (1) Passing off goods or services as those of another.
- 2 (2) Misrepresenting the source, sponsorship, approval, or
3 certification of goods or services.
- 4 (3) Misrepresenting the affiliation, connection, or association
5 with, or certification by, another.
- 6 (4) Using deceptive representations or designations of
7 geographic origin in connection with goods or services.
- 8 (5) Representing that goods or services have sponsorship,
9 approval, characteristics, ingredients, uses, benefits, or quantities
10 which they do not have or that a person has a sponsorship,
11 approval, status, affiliation, or connection which he or she does
12 not have.
- 13 (6) Representing that goods are original or new if they have
14 deteriorated unreasonably or are altered, reconditioned, reclaimed,
15 used, or secondhand.
- 16 (7) Representing that goods or services are of a particular
17 standard, quality, or grade, or that goods are of a particular style
18 or model, if they are of another.
- 19 (8) Disparaging the goods, services, or business of another by
20 false or misleading representation of fact.
- 21 (9) Advertising goods or services with intent not to sell them
22 as advertised.
- 23 (10) Advertising goods or services with intent not to supply
24 reasonably expectable demand, unless the advertisement discloses
25 a limitation of quantity.
- 26 (11) Advertising furniture without clearly indicating that it is
27 unassembled if that is the case.
- 28 (12) Advertising the price of unassembled furniture without
29 clearly indicating the assembled price of that furniture if the same
30 furniture is available assembled from the seller.
- 31 (13) Making false or misleading statements of fact concerning
32 reasons for, existence of, or amounts of price reductions.
- 33 (14) Representing that a transaction confers or involves rights,
34 remedies, or obligations which it does not have or involve, or
35 which are prohibited by law.
- 36 (15) Representing that a part, replacement, or repair service is
37 needed when it is not.
- 38 (16) Representing that the subject of a transaction has been
39 supplied in accordance with a previous representation when it has
40 not.

1 (17) Representing that the consumer will receive a rebate,
2 discount, or other economic benefit, if the earning of the benefit
3 is contingent on an event to occur subsequent to the consummation
4 of the transaction.

5 (18) Misrepresenting the authority of a salesperson,
6 representative, or agent to negotiate the final terms of a transaction
7 with a consumer.

8 (19) Inserting an unconscionable provision in the contract.

9 (20) Advertising that a product is being offered at a specific
10 price plus a specific percentage of that price unless (A) the total
11 price is set forth in the advertisement, which may include, but is
12 not limited to, shelf tags, displays, and media advertising, in a size
13 larger than any other price in that advertisement, and (B) the
14 specific price plus a specific percentage of that price represents a
15 markup from the seller's costs or from the wholesale price of the
16 product. This subdivision shall not apply to in-store advertising
17 by businesses which are open only to members or cooperative
18 organizations organized pursuant to Division 3 (commencing with
19 Section 12000) of Title 1 of the Corporations Code where more
20 than 50 percent of purchases are made at the specific price set forth
21 in the advertisement.

22 (21) Selling or leasing goods in violation of Chapter 4
23 (commencing with Section 1797.8) of Title 1.7.

24 (22) (A) Disseminating an unsolicited prerecorded message by
25 telephone without an unrecorded, natural voice first informing the
26 person answering the telephone of the name of the caller or the
27 organization being represented, and either the address or the
28 telephone number of the caller, and without obtaining the consent
29 of that person to listen to the prerecorded message.

30 (B) This subdivision does not apply to a message disseminated
31 to a business associate, customer, or other person having an
32 established relationship with the person or organization making
33 the call, to a call for the purpose of collecting an existing
34 obligation, or to any call generated at the request of the recipient.

35 (23) The home solicitation, as defined in subdivision (h) of
36 Section 1761, of a consumer who is a senior citizen where a loan
37 is made encumbering the primary residence of that consumer for
38 the purposes of paying for home improvements and where the
39 transaction is part of a pattern or practice in violation of either
40 subsection (h) or (i) of Section 1639 of Title 15 of the United States

1 Code or paragraph (e) of Section 226.32 of Title 12 of the Code
2 of Federal Regulations.

3 A third party shall not be liable under this subdivision unless
4 (A) there was an agency relationship between the party who
5 engaged in home solicitation and the third party or (B) the third
6 party had actual knowledge of, or participated in, the unfair or
7 deceptive transaction. A third party who is a holder in due course
8 under a home solicitation transaction shall not be liable under this
9 subdivision.

10 (24) (A) Charging or receiving an unreasonable fee to prepare,
11 aid, or advise any prospective applicant, applicant, or recipient in
12 the procurement, maintenance, or securing of public social services.

13 (B) For purposes of this paragraph, the following definitions
14 shall apply:

15 (i) "Public social services" means those activities and functions
16 of state and local government administered or supervised by the
17 State Department of Health Care Services, the State Department
18 of Public Health, or the State Department of Social Services, and
19 involved in providing aid or services, or both, including health
20 care services, and medical assistance, to those persons who,
21 because of their economic circumstances or social condition, are
22 in need of that aid or those services and may benefit from them.

23 (ii) "Public social services" also includes activities and functions
24 administered or supervised by the United States Department of
25 Veterans Affairs or the California Department of Veterans Affairs
26 involved in providing aid or services, or both, to veterans, including
27 pension benefits.

28 (iii) "Unreasonable fee" means a fee that is exorbitant and
29 disproportionate to the services performed. Factors to be
30 considered, when appropriate, in determining the reasonableness
31 of a fee, are based on the circumstances existing at the time of the
32 service and shall include, but not be limited to, all of the following:

33 (I) The time and effort required.

34 (II) The novelty and difficulty of the services.

35 (III) The skill required to perform the services.

36 (IV) The nature and length of the professional relationship.

37 (V) The experience, reputation, and ability of the person
38 providing the services.

39 (C) This paragraph shall not apply to attorneys licensed to
40 practice law in California, who are subject to the California Rules

1 of Professional Conduct and to the mandatory fee arbitration
2 provisions of Article 13 (commencing with Section 6200) of
3 Chapter 4 of Division 3 of the Business and Professions Code,
4 when the fees charged or received are for providing representation
5 in administrative agency appeal proceedings or court proceedings
6 for purposes of procuring, maintaining, or securing public social
7 services on behalf of a person or group of persons.

8 (25) (A) Advertising or promoting any event, presentation,
9 seminar, workshop, or other public gathering regarding veterans'
10 benefits or entitlements that does not include the following
11 statement in the same type size and font as the term "veteran" or
12 any variation of that term:

13 (i) "I am not authorized to file an initial application for Veterans'
14 Aid and Attendance benefits on your behalf, or to represent you
15 before the Board of Veterans' Appeals within the United States
16 Department of Veterans Affairs in any proceeding on any matter,
17 including an application for such benefits. It would be illegal for
18 me to accept a fee for preparing that application on your behalf."
19 The requirements of this clause do not apply to a person licensed
20 to act as an agent or attorney in proceedings before the Agency of
21 Original Jurisdiction and the Board of Veterans' Appeals within
22 the United States Department of Veterans Affairs when that person
23 is offering those services at the advertised event.

24 (ii) The statement in clause (i) shall also be disseminated, both
25 orally and in writing, at the beginning of any event, presentation,
26 seminar, workshop, or public gathering regarding veterans' benefits
27 or entitlements.

28 (B) Advertising or promoting any event, presentation, seminar,
29 workshop, or other public gathering regarding veterans' benefits
30 or entitlements which is not sponsored by, or affiliated with, the
31 United States Department of Veterans Affairs, the California
32 Department of Veterans Affairs, or any other congressionally
33 chartered or recognized organization of honorably discharged
34 members of the Armed Forces of the United States, or any of their
35 auxiliaries that does not include the following statement, in the
36 same type size and font as the term "veteran" or the variation of
37 that term:

38
39 "This event is not sponsored by, or affiliated with, the United
40 States Department of Veterans Affairs, the California Department

1 of Veterans Affairs, or any other congressionally chartered or
2 recognized organization of honorably discharged members of the
3 Armed Forces of the United States, or any of their auxiliaries.
4 None of the insurance products promoted at this sales event are
5 endorsed by those organizations, all of which offer free advice to
6 veterans about how to qualify and apply for benefits.”

7
8 (i) The statement in this subparagraph shall be disseminated,
9 both orally and in writing, at the beginning of any event,
10 presentation, seminar, workshop, or public gathering regarding
11 veterans’ benefits or entitlements.

12 (ii) The requirements of this subparagraph shall not apply in a
13 case where the United States Department of Veterans Affairs, the
14 California Department of Veterans Affairs, or other congressionally
15 chartered or recognized organization of honorably discharged
16 members of the Armed Forces of the United States, or any of their
17 auxiliaries have granted written permission to the advertiser or
18 promoter for the use of its name, symbol, or insignia to advertise
19 or promote the event, presentation, seminar, workshop, or other
20 public gathering.

21 (26) *Representing that a product is designed, made, or designed*
22 *and made in a city or county of the state by using a “made in”*
23 *(name of city or county) label, unless either of the following*
24 *standards is met:*

25 (A) *The company manufactures the product in the city or county*
26 *identified on the “made in” label.*

27 (B) *The company has a workforce based in the identified city*
28 *or county.*

29 (b) (1) It is an unfair or deceptive act or practice for a mortgage
30 broker or lender, directly or indirectly, to use a home improvement
31 contractor to negotiate the terms of any loan that is secured,
32 whether in whole or in part, by the residence of the borrower and
33 which is used to finance a home improvement contract or any
34 portion thereof. For purposes of this subdivision, “mortgage broker
35 or lender” includes a finance lender licensed pursuant to the
36 California Finance Lenders Law (Division 9 (commencing with
37 Section 22000) of the Financial Code), a residential mortgage
38 lender licensed pursuant to the California Residential Mortgage
39 Lending Act (Division 20 (commencing with Section 50000) of
40 the Financial Code), or a real estate broker licensed under the Real

1 Estate Law (Division 4 (commencing with Section 10000) of the
2 Business and Professions Code).
3 (2) This section shall not be construed to either authorize or
4 prohibit a home improvement contractor from referring a consumer
5 to a mortgage broker or lender by this subdivision. However, a
6 home improvement contractor may refer a consumer to a mortgage
7 lender or broker if that referral does not violate Section 7157 of
8 the Business and Professions Code or any other provision of law.
9 A mortgage lender or broker may purchase an executed home
10 improvement contract if that purchase does not violate Section
11 7157 of the Business and Professions Code or any other provision
12 of law. Nothing in this paragraph shall have any effect on the
13 application of Chapter 1 (commencing with Section 1801) of Title
14 2 to a home improvement transaction or the financing thereof.

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